Exhibit 7

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE, COUNTY, FLORIDA

Complex Business Division Judge William L. Thomas Consolidated Cases: CASE NO. 15-06405-CA 44

CASE NO. 14-05447 CA 44

CASE NO. 14-02090 CA 44

SARA JAYNE KENNEDY,

Plaintiff,

VS.

MONADNOCK CONSTRUCTION, INC., et

Defendants.

ORDER ON DEFENDANT WESTCHESTER'S MOTIONS TO DISMISS BASED ON MANDATORY FORUM SELECTION CLAUSE

UPON CONSIDERATION OF Defendant Westchester Fire Insurance Company's Motions to Dismiss Based on Mandatory Forum Selection Clause, and the Court having heard argument of counsel at a hearing held in this matter on Monday, April 30, 2018, it is hereby

ADJUDGED:	
Granfed. The	se consolidated cases
against Westchecke	- Fire Inquance Company
are alamissed for	the reasons set
forth in the reco	and transcribed huring the
DONE in Chambers at Miami, Miami-	
	William L. Thomas
Carries franched to	Circuit Judge
Copies furnished to: All Counsel of Record	William Thomas
All Courser of Record	

Circuit Court Judge

April 30, 2018

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	RA JATNE KENNEDT VS WONADNOCI	`	· · ·
1	Page 1 IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT	1	Page 3 (Thereupon, the following proceedings were had):
2	IN AND FOR MIAMI-DADE, COUNTY, FLORIDA	2	THE COURT: All right. Let's do the motion to
	Complex Business Division	3	dismiss.
3	Judge William L. Thomas	4	MR. GILBERT: Good morning, Judge. Jeffrey
4	Consolidated Cases:	5	Gilbert on behalf of Westchester Fire Insurance
5	CASE NO. 15-06405-CA 44	6	Company.
6		7	MR. MAGOLNICK: Joel Magolnick on behalf of Sara
7	CASE NO. 14-05447 CA 44	8	Jayne Kennedy and Ugo Colombo.
8	CASE NO. 14-02090 CA 44	9	MR. GILBERT: And we submitted a notebook with
9	CADA TAVNIE VENNIEDV	10	our three motions and our response and reply.
10	SARA JAYNE KENNEDY,	11	THE COURT: Let me get it.
11	Plaintiff,	12	MR. GILBERT: Thank you.
12	VS.	13	MR. LODISH: And just to note, Alvin Lodish is
13	MONADNOCK CONSTRUCTION, INC., et al.	14	here representing Monadnock, HPS 50, HPS Borden, and
	Defendants.	15	Related Companies, and Bruce Beal.
14 15	/	16	THE COURT: You may proceed.
16	HEARING BEFORE THE HONORABLE JUDGE WILLIAM THOMAS	17	MR. GILBERT: Judge, we are here to dismiss the
17	Monday, April 30, 2018 11:10 a.m 11:30 a.m.	18	three consolidated cases based upon a mandatory forum
18	DADE COUNTY COURTHOUSE	19	selection clause that is in the indemnity agreement
19	MIAMI, FLORIDA	20	which is the only agreement between the Colombos and
20 21		21	Westchester, okay, the only agreement. In the
22	This cause came on to be heard at the time and place aforesaid, when and where the following	22	responses of the Colombos, they don't challenge the
	proceedings were reported by:	23	mandatory nature of the forum selection clause. They
23	Cicely Moore, Court Reporter and Notary Public	24	don't meet any burden which they're obligated to meet
24	Esquire Deposition Solutions Miami, Florida	25	as the party challenging the mandatory forum selection
25	1-800-292-6952		Dogo 4
1	Page 2 APPEARANCES:	1	Page 4 clause. They are supposed to meet the high burden that
2		2	they would have absolutely no forum whatsoever to
3	Joel S. Magolnick, Esquire Marko & Magolnick, P.A.	3	litigate their cases if they are not litigated here,
	3001 SW 3rd Ave	4	and in fact, all of the parties, as you know, are
4	Miami, FL 33129	5	litigating these cases in New York.
5	On behalf of the Plaintiff, Sara Jayne Kennedy and Ugo Colombo	6	The mandatory forum selection clause, according
6		7	to the Third DCA and the Florida Supreme Court, all of
7	Jeffrey C. Gilbert, Esquire Cozen O'Connor	8	the cases that we've cited in the three motions to
8	200 S Biscayne Blvd, Ste 3000	9	dismiss in each of the consolidated cases and we've set
	Miami, FL 33131	10	forth in our reply, state specifically that the
9	On behalf of the Defendant,	11	mandatory forum selection clauses in Florida are
10	Westchester Fire Insurance Company	12	presumptively valid; that the courts enforce them. And
11		13	again, the only way they would not enforce it is if the
12	Alvin D. Lodish, Esquire Duane Morris LLP	14	party challenging it met the high burden that they
	200 S Biscayne Blvd, Ste 3400	15	would have no forum at all whatsoever to litigate their
13	Miami, FL 33131	16	cases if they could not litigate them in Florida where
14	On behalf of the Defendants, Monadnock, HPS 50, HPS Borden,	17	they are forum shopping.
15	Related Companies, and Bruce Beal	18	There's absolutely no question that the clause is
16		19	valid. It is the only agreement between our client
17		20	Westchester and the Colombos. And just to give you a
18 19		21	little history on it, so the Colombos are principals in
20		22	-
21		23	, ,
22		24	people, to supply 9,000 units of glass, or whatever, to
24		25	
105		23	tivo large buildings that were constructed in Long
25			



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- 1 Island City, New York. There was an alleged default.
- 2 But to support the contract -- to support the contract,
- 3 Judge, the Glasswall and its principals, the Colombos,
- 4 Ugo Colombo and his wife Sara Kennedy Colombo, needed
- 5 to submit performance bonds, and the way that they were
- 6 able to submit performance bonds was they entered into
- 7 an agreement with Westchester and with -- excuse me,
- an agreement man viocionector and man excuse me
- 8 with Westchester where Westchester is the surety and
- 9 the Colombos are the indemnitors. If you need me to
- 10 point you to the --
- 11 THE COURT: Well, I'm looking for the selection
- 12 clause.
- 13 MR. GILBERT: Okay. If you look in Tab 5, Judge,
- 14 Exhibit A. So go to Tab 5, Exhibit A, Paragraph 10.
- 15 MR. MAGOLNICK: Your Honor, we'll stipulate that
- 16 the forum selection clause, when you look at the
- 17 indemnity agreement, the forum selection clause is a
- 18 mandatory forum selection clause. We stipulate to
- 19 that. It says what it says. The language says
- 20 "shall." So we don't dispute that. But that's not our
- 21 argument.
- 22 THE COURT: Okay.
- 23 MR. GILBERT: Their response is they don't even
- 24 address it, and now they've stipulated to it for the
- 25 first time, Judge. What they're alleging --
- Page 6
- 1 THE COURT: Go ahead, sir. I'm listening.
- 2 MR. GILBERT: Judge, what they're alleging is
- 3 that the bonds that came out from the indemnity
- 4 agreement -- and under these bonds there were two bonds
- 5 issued, a performance and payment bond. The --
- 6 Westchester was the surety, Glasswall was the
- 7 principal, and the obligee of the performance bonds was
- 8 the developer/manager of the building, okay, to
- 9 guarantee the performance of the contract. His
- 10 individual clients are not parties to the bonds,
- 11 absolutely not parties to the bonds. The only
- 12 agreement is the indemnity agreement.
- 13 They are trying to allege in the case that they
- 14 filed against us in Florida, that they want a
- 15 declaration that somehow we are not -- that they are
- 16 not liable to us for any personal liability. The only
- 17 way they have personal liability to Westchester Fire
- 18 Insurance Company is based upon the two party agreement
- 19 that is the indemnity agreement. They're claiming that
- 20 they want to go under a forum selection provision
- 21 that's in the bonds, but they are not parties to the
- 22 bonds. Their company Glasswall is a party to the
- 23 bonds, but they are not parties to the bonds.
- 24 THE COURT: Meaning individually they are not
- 25 parties.

- MR. GILBERT: Individually, that is correct.
- 2 THE COURT: But they have sued individually here
- 3 in Miami-Dade County.
- 4 MR. GILBERT: That's absolutely correct, Judge.
- 5 And they're being sued individually by Westchester in
- 6 the New York litigation. We think it's absolutely
- 7 clear that they have no right to be forum shopping and
- 8 litigating in the Florida courts when the mandatory
- 9 forum selection provision, which is presumptively valid
- 10 and should be upheld, is the only provision in the
- 11 agreement that exists between these two parties.
- 12 THE COURT: I understand. Sir.
- 13 MR. MAGOLNICK: First of all, in terms of the
- 14 claim -- first of all, Sara Jayne Kennedy is not a
- 15 principal in Glasswall. Everyone keeps saying that.
- 16 She's never been an officer, director, or member. Ugo
- 17 Colombo is, or to the extent the company exists.
- 18 THE COURT: Mr. Colombo lives here.
- 19 MR. MAGOLNICK: Yes.
- 20 THE COURT: He's with The Collection. Is that a
- 21 different person?
- 22 MR. LODISH: No, same person.
- 23 THE COURT: I have another case. That's all.
- 24 MR. MAGOLNICK: So the issue here, Your Honor, is
- 25 there's the indemnity agreement and then there are the

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- 1 bonds. So while we don't dispute that the language of
- 2 the indemnity agreement is what they say it is, it is
- 3 what it is, but what we're here about now is that they
- 4 want to rely solely on the forum selection in the
- 5 indemnity agreement. But what we attach to all three
- 6 complaints, the amended complaint in 2014 for
- 7 Ms. Kennedy, the complaint for Mr. Colombo in 2014,
- 8 then the complaint in 2015 for Ms. Kennedy, was that we
- 9 attached the bonds, because without the bonds there is
- $10\,\,$ no agreement for indemnity. It can't exist on its own.
- 11 That agreement for indemnity is -- is dependent on the
- 12 bonds. And if --
- 13 THE COURT: How so?
- 14 MR. MAGOLNICK: Well, because without -- the only
- 15 reason those agreements for indemnity exist is because
- 6 Westchester issued bonds in favor of Monadnock, and the
- 17 only reason that my clients would be potentially liable
- 18 is if Westchester has to perform under the bonds.
- 19 That's undisputed. That's the only way my client can
- 20 be liable under the bonds. So because the agreement
- 21 for indemnity is wholly dependent on the bonds, we have
- 22 an interest in ensuring that the terms of the bonds are
- 23 complied with.
- 24 So in -- they ask that the Court focus
- 25 exclusively on the indemnity agreement and to ignore



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- 1 the language in the bonds. The language in the bonds
- 2 specifically say that the jurisdiction for any claims
- relating to the bonds can be anywhere where any portion
- 4 of the work was performed. What we have alleged in the
- 5 complaint, and it's undisputed that we've alleged in
- the complaint and they don't dispute it, is that the
- part -- at least part of the work was done down here.
- The windows were manufactured down here and shipped up
- 9 to New York. So there's no doubt about that.
- And what they also don't address in their reply 10
- 11 is we've brought this under the declaratory relief act.
- So under 86.021, it says any person claiming to be
- 13 interested or who may be in doubt about his or her
- rights under a contract or other instrument in writing
- 15 or whose rights, status, or other equitable or legal
- relationships -- relations are affected by a contract
- 17 may seek a declaration of rights, status, or other
- 18 equitable or legal relations thereunder.
- 19 THE COURT: But why can't you do that in New
- 20 York?
- 21 MR. MAGOLNICK: Your Honor, we filed here first.
- 22 The New York action was a subsequent filed action that
- 23 Westchester filed while this case was stayed.
- 24 THE COURT: But no, my question is, is that if
- 25 you're telling me that there is a mandatory forum

- 1 requiring it to be filed at any particular
- 2 jurisdiction, but you then file it, a dec action here
- in Miami-Dade County.
- 4 MR. MAGOLNICK: Right.
- 5 THE COURT: Because you believe that your
- performance, pursuant to the indemnity agreement that
- should be litigated in New York, is wholly dependent or
- the bond doesn't come into play until the indemnity is
- 9 established.
- 10 MR. MAGOLNICK: No, it's actually the opposite.
- 11 THE COURT: The opposite way.
- 12 MR. MAGOLNICK: The indemnity doesn't come into
- 13 play until Westchester's obligations under the bonds
- are established. Because we don't have an indemnity
- agreement -- an indemnity obligation if Westchester
- 16 doesn't have to perform under the bonds.
- 17 THE COURT: My question is -- and thank you.
- Sometimes it's hard keeping it all together. How do
- you -- so I don't understand. If the one agreement
- that you are a party to agreed that the case is
- 21 mandatory -- should mandatory be filed in New York, why
- then should the bond issue that you are not a -- where
- 23 there's no mandatory clause, where you are not a
- 24 signatory to, right?
- 25 MR. MAGOLNICK: We're not a signatory to. We

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- selection clause as to the main agreement --
- 2 MR. MAGOLNICK: No, no, as to the indemnity
- 3 agreement, not as to the bonds.
- 4 THE COURT: Thank you.
- 5 MR. GILBERT: It's the only agreement between our
- parties. The bonds are not an agreement between the 7 parties.
- 8 THE COURT: I'm sorry, I misspoke. There is a --
- there is a mandatory forum selection provision as to
- the indemnity agreement that you are a party of. 10
- 11 MR. GILBERT: Correct.
- 12 MR. MAGOLNICK: Yes. Your Honor.
- 13 THE COURT: There is no forum selection --
- mandatory forum selection provision as it relates to 14
- 15 the bonds
- 16 MR. MAGOLNICK: There is a -- a specific --
- 17 THE COURT: No mandatory.
- 18 MR. MAGOLNICK: No mandatory, Your Honor.
- 19 THE COURT: Okay. And so you're saying to me, I
- 20 agreed that this matter should be litigated in New
- York, the -- the agreement that I am a party to. The
- 22 bonds, which you say are essential to your performance
- 23 of the agreement that you are a party to --
- 24 MR. MAGOLNICK: Yes, Your Honor.
- 25 THE COURT: -- is -- it doesn't speak in terms of

- Page 12 are -- we are interested under the dec action statute.
- THE COURT: You're interested because you want to
- 3 know that that somehow will trigger something.
- 4 MR. MAGOLNICK: Right.
- 5 THE COURT: So the question is, but you can't
- 6 then transfer back to Miami and attempt to litigate
- that in Miami when the main cause -- because we
- shouldn't be litigating -- one thing that we all know,
- and hopefully we all will agree, that you got to be
- very careful in litigating issues that overlap in more
- than one jurisdiction because the -- the -- the
- confusion that could result, or better yet, the
- inconsistency in rulings that could result could wreak
- havoc for everybody. That's why I don't understand why
- this shouldn't go to New York. 15
- 16 MR. MAGOLNICK: Because it was here first. They
- 17 waited until --
- 18 THE COURT: Go ahead, sir.
- 19 MR. MAGOLNICK: They waited -- while there was a
- stay in -- stay in place here is when Westchester filed
- its action in New York against my clients. This action
- is down here and it's all interrelated with the claims
- that are -- with all the other defendants in this case 24 because but for the claim between Monadnock and
- 25 Glasswall, we wouldn't have this claim -- this case



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1 down here either. But for the claim between Glasswall

- 2 and Monadnock, we wouldn't have Westchester involved,
- 3 Westchester Fire Insurance involved. That's why it was
- 4 filed down here. My clients are down here. The bond
- 5 allows for any action under that relates to the bonds
- 6 to be filed anywhere where there -- where any portion
- 7 of the work was done. There's no --
- THE COURT: But isn't that defeating the whole
- 9 purpose of the mandatory forum selection clause?
- 10 Because what you're saying is, is that but the bond
- doesn't tell me that I'm required to file in New York.
- The bond leaves it open or at least says any party who
- 13 has any interest, and it's broad enough that I can file
- 14 it here.
- 15 And I understand and I'm asking them a question
- 16 about how this all transpired in terms of why they
- 17 filed what they did, where they filed it as compared to
- when this case was pending, but I still don't
- understand how I'm supposed to deal with the
- 20 possibility of these inconsistent rulings. What if I
- 21 do one thing and the judge in New York does something
- totally opposite of what I do? How are we supposed to 22
- 23 resolve that? I can't tell there's a mandatory forum
- 24 selection clause that you're not challenging. I can't
- 25 tell them that they need to file it here and I can't
 - Page 14
- 1 tell the New York judge what to do. The only thing
- that is a little more open and fluid is the bond
- 3 because it can be filed anywhere and you've chosen to
- 4 file it here. And I'm not -- I mean, you said you had
- 5 a right to and your client lives here.
- 6 MR. MAGOLNICK: Sure.
- THE COURT: And he has an interest, obviously, in
- 8 the bond, as you have reflected. So I'm just -- I'm
- just a little taken aback because I'm not sure how I'm
- supposed to deal with that, because I think if I agreed
- with you I would be rendering the mandatory forum 11
- 12 selection clause a nullity.
- 13 MR. MAGOLNICK: Well, Your Honor, you're not --
- 14 I'm not -- when you say that we're not challenging the
- 15 mandatory forum selection clause, we're not denying its
- existence and we're not denying that we're a party to
- 17 an agreement that has that mandatory forum selection
- 18 clause. What we are challenging is the applicability
- 19 of that mandatory forum selection clause to this
- 20 particular proceeding. Right now, because there's been
- no determination -- there's been no determination under
- 22 the bonds, this is where we should be if this is where
- 23 we chose to file. There is no -- there's -- there's --
- it's not as though there's already been a determination
- of Westchester's liability to Monadnock and then

- Page 15 1 Westchester gets to say, well, we're liable so now we
- go under the indemnity agreement. That's our position,
- that right now where we are is because there's no
- determination as to the -- as to the liability of -- of
- Westchester to Monadnock under the bonds. So -- and
- what we're saying is based upon the finding of the
- arbitrators in New York, based upon the arbitration
- award where they found Monadnock to have been in
- breach, we're saying that because of that, Westchester
- has no liability under the bond; and if Westchester has
- no liability under the bonds, then we certainly have no
- liability, because the only way we would have liability
- is if Westchester is found to be liable to Monadnock
- 14 under the bonds.
- 15 MR. GILBERT: Judge, you're exactly correct. The
- 16 only agreement that is between the two of us is the
- 17 indemnity agreement. It has the mandatory forum
- selection clause. When they argue to you that, well,
- 19 they filed here first --
- 20 THE COURT: Can you read to me that -- where is
- 21 the -- where is the --
- 22 MR. GILBERT: Yeah, the mandatory forum selection
- 23 clause, if you look at --
- 24 THE COURT: Tab 5.
- 25 MR. GILBERT: You can look at Page 2, Tab 5, in

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- 1 the middle of the page.
 - 2 THE COURT: Give me one minute, please.
 - 3 MR. GILBERT: Yeah.
 - 4 THE COURT: See, sir, can I ask you a question?
 - 5 MR. MAGOLNICK: Sure.
 - 6 THE COURT: "All actions or proceedings arising
 - directly or indirectly from this agreement shall be
 - litigated only in courts having status within the state
 - of New York and consents to the personal jurisdiction
 - 10 venue."
 - 11 MR. MAGOLNICK: Sure.
 - THE COURT: So when you say -- when it says 12
 - "directly and indirectly," because you're basically
 - 14 saying I'm not a party to the bond, right?
 - 15 MR. MAGOLNICK: Right.
 - 16 THE COURT: But the bond indirectly -- the bond
 - proceedings indirectly impact me pursuant to the
 - agreement that I have that I am a party to. So I don't
 - understand why that doesn't put you up in New York.
 - 20 MR. MAGOLNICK: Because it's --
 - 21 MR. GILBERT: And it does, Judge.
 - 22 THE COURT: Well, one minute.
 - 23 MR. MAGOLNICK: Because we're not -- this is not
 - 24 an action that's indirectly under the indemnity
 - agreement. It is an action based upon the bonds.



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1	Page 17 What what we have an interest in a determination	1	Page 19 clause, and and when I have to resolve potential
	that Westchester has no liability to Monadnock under	2	conflicts that could arise from say the New York court
	the bonds. And it's not as though we're doing this in	3	making a judgment and this court making a judgment, I
	a vacuum. We are basing it on a finding of the	4	think we need to err on the fact that there's a
5	arbitrators in New York that said Monadnock breached.	5	mandatory forum selection clause. And who filed first,
6	And based upon Monadnock's breach, there is no	6	I'm not even sure that that necessarily controls what
7	liability that Westchester has.	7	I'm doing because of that. And because of that, I
8	THE COURT: Let me ask you this way.	8	think I need to grant the motion to dismiss.
9	MR. MAGOLNICK: Sure.	9	MR. MAGOLNICK: Okay.
10	THE COURT: Show me the one case you have where	10	,
11	you are not a party to you had an agreement that you	11	MR. MAGOLNICK: Thank you, Your Honor.
12		12	-
13	action, and you chose, because you had an indirect	13	- ' '
14	the other action had an indirect effect upon your	14	THE COURT: Well, I think you want to I mean
15	•	15	this is an appealable order. I think we need to say
16	MR. MAGOLNICK: Yes, Your Honor.	16	something more than "granted."
17	THE COURT: that the court said, yes, you can	17	MR. MAGOLNICK: We can say "for the reasons set
18		18	-
19	mandatory jurisdiction because it was it was	19	MR. GILBERT: Based upon the mandatory forum
20	permissible under the action that you under the	20	•
21	contracted agreement that you were not a party of but	21	THE COURT: Well, maybe you just want to state
22	you were indirectly impacted by.	22	
23	MR. MAGOLNICK: You want a case that specifically	23	-
24		24	MR. MAGOLNICK: Right. And then we can order the
25	THE COURT: Well, something that's analogous.	25	-
	THE GOOTT. Won, comouning that canalogous.		a anoshpi.
1	Page 18 Give me something that's analogous. Something that	4	Page 20
1	would have me rule in your favor, put it that way.	1	(This proceeding was concluded at 11:30 a.m.)
3	MR. MAGOLNICK: I'm looking at the statute that	3	
	we're going under, 86.201, that says that any person	4	
5	claiming to be interested or may be in doubt about his	5	
	or her rights under a contract can seek a declaration	6	
7	of rights, status, or other equitable or legal	7	
	relations thereto. We are not seeking	8	
9	MR. GILBERT: It's not	9	
10	MR. MAGOLNICK: We are not seeking a declaration	10	
11	under the indemnity agreement. We are seeking it under	10	
12		12	
13	THE COURT: But	13	
14	MR. MAGOLNICK: We've alleged we have an	14	
15	-	15	
16	THE COURT: And I accept that.	16	
17	MR. MAGOLNICK: I don't have a case that	17	
18		18	
19	THE COURT: The problem that you have is that I	19	
20		20	
21	mandatory forum selection clause in the other	21	
22	•	22	
23	MR. MAGOLNICK: We haven't found one, Judge.	23	
24	-	24	
25	'	25	
	J	⊣ ∠ ∪	•



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Page 21 CERTIFICATE OF REPORTER STATE OF FLORIDA) 3 COUNTY OF MIAMI-DADE) 4 5 I, Cicely Moore, Court Reporter, certify that I 6 was authorized to and did stenographically report the 7 proceedings at the time and place described herein; that the transcript is a true and complete record of said proceedings. 10 Dated this 10th day of May, 2018. 11 12 moore 13 Cicely Moore 14 Notary Public State of Florida Commission #GG124933 15 Expires July 17, 2021 16 17 18 19 20 21 22 23 24 25

